



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA**

In re

WILLIAM J. BEVERLY,

Debtor

Case No. LA 04-29840 TD

Chapter 7

**MEMORANDUM OF DECISION IN
SUPPORT OF ORDER GRANTING
MOTION FOR APPROVAL OF
COMPROMISE**

DATE: November 14, 2007

TIME: 10:30 a.m.

PLACE: Courtroom 1345

This matter was set for hearing on November 14, 2007. Douglas D. Kappler of Robinson, Diamant & Wolkowitz filed a motion to approve a settlement between Edward M. Wolkowitz, chapter 7 trustee (Trustee) and Chicago Insurance Company (Chicago). Dennis McGoldrick of McGoldrick & McGoldrick filed written opposition to the motion on behalf of Debtor, William Beverly (William). Joshua D. Wayser of Locke Lord Bissell & Liddell filed written opposition to the motion on behalf of Stephanie Beverly (Stephanie), Debtor's ex-spouse. Prior to the hearing, I issued a tentative ruling to grant Trustee's motion seeking approval of the settlement and excused counsels' appearances at the hearing. No one appeared. Upon consideration of the evidence and the briefs of counsel, the following are my findings of fact and

1 conclusions of law.

2 **INTRODUCTION**

3 In April 2002, Chicago issued a lawyers professional liability insurance policy
4 covering the Beverly Law Corporation and William Beverly (Policy). The Policy
5 covered claims made during a one-year period for negligent acts that occurred after
6 March 21, 1996.

7 On November 1, 2006, the Trustee sued Chicago in Adversary No. LA 06-
8 02016-TD, later transferred to the district court upon withdrawal of reference. The suit
9 sought declaratory relief respecting the coverage of the Policy and damages and
10 attorneys' fees for breach of contract and of Chicago's covenant of good faith and fair
11 dealing. While the alleged negligent acts at issue occurred before March 21, 1996,
12 Trustee asserted that William's failure to disclose specific conflicts of interest created
13 a "continuous trigger" that moved William's acts to within the Policy reach back period.
14 Chicago disputed the claim that it had any liability under the Policy because Chicago
15 asserted that William's alleged acts were intentional and thus "not covered" and that
16 they occurred outside the reach back period of the Policy.

17 On August 29, 2007, after more than 9 months of litigation between Trustee
18 and Chicago, the parties reached and formalized a written settlement and release
19 agreement (Agreement). This motion sought an order approving the Agreement. The
20 Agreement provides, in pertinent part, that:

- 21 (1) Chicago will pay Trustee \$150,000.
22 (2) Trustee relinquishes and waives all past, present, and future
23 rights of William under the Policy.
24 (3) The Agreement amounts to a rescission of the Policy; and
25 (4) As to all rights of the [William Beverly bankruptcy] estate, the
26 Agreement is binding upon William and all creditors who received

1 notice of the motion including, but not limited to, Stephanie
2 Beverly.

3 Stephanie, through her attorney asserts 3 grounds, in opposition to the
4 Trustee's motion. First, that this court lacks jurisdiction to extinguish Stephanie's
5 rights under the Policy. Second, that her rights are not estate property and that court
6 approval of the Agreement would violate a rule that she asserts that a settlement must
7 take into account the rights of third parties. Third, that neither the Trustee nor William
8 has the right to extinguish Stephanie's rights under the Policy without her consent.

9 William, through his attorney asserts, in opposition to the Trustee's motion that
10 the Agreement is not in the best interest of the estate and was entered into in bad
11 faith. William claims that the Agreement would extinguish William's claim under the
12 Policy, result in prolonging William's bankruptcy case, and would exacerbate the fees
13 of the Trustee and Trustee's counsel. Additionally, William claims that the Trustee
14 does not own William's postpetition claims against the Policy.

15 DISCUSSION

16 The written oppositions filed by William Beverly and Stephanie Beverly
17 (collectively, the Beverlys) are overruled. While the Beverlys both have an interest in
18 the outcome of the Trustee's Policy claims, the interests of each of the Beverlys is
19 indirect and secondary to the needs of the Trustee, in his capacity as trustee of the
20 William Beverly bankruptcy estate.

21 The Policy claims are property of William's bankruptcy estate; William has no
22 property rights in the Policy or its proceeds. Since the cause of action against
23 Chicago was incurred prepetition, any rights to damages arising from William's
24 prepetition acts are property of the bankruptcy estate, even if damages continue to
25 accumulate postpetition.

26 The Trustee, as William's chapter 7 trustee, is the holder of the right to assert

1 all William's claims under the Policy. The Agreement settles only the issues related to
2 property of the bankruptcy estate and nothing more; it does not preclude Stephanie
3 from asserting in any forum any claim she believes she has. At the same time, I note
4 that Stephanie does not articulate any specific claim under the Policy. In any event,
5 her concerns are outweighed by the needs of the Trustee to complete the orderly
6 administration of William's bankruptcy estate.

7 This litigation involves a long, detailed factual history that spans a 15-year
8 period. The investigation, preparation, and trial of this insurance claim would be time
9 consuming and costly. Chicago demanded a jury trial that is estimated to take at least
10 2-3 weeks, not including pretrial preparation that appears to require discovery and
11 depositions throughout the country.

12 The projected outcome of the litigation is in considerable doubt because of (a)
13 the long factual history and (b) the defenses asserted by the Chicago. Although the
14 "continuous trigger" theory is a well-recognized one, the Trustee acknowledges that
15 his theory is used mainly in another context, to apportion damage claims for
16 progressive and continuing injuries among multiple insurance carriers who issued
17 comprehensive general liability policies. It would be difficult for the Trustee here to
18 stretch his claim to fit the theory and, even if he could do so, the Trustee would still
19 have to overcome Chicago's defense asserting that the alleged negligent acts
20 occurred prior to the Policy reach back period.

21 While collection of any judgment against Chicago presumably would not be a
22 problem, the predictability of the outcome of Policy litigation is uncertain, at the least, if
23 not impossible to judge. Consequently, court approval of the Agreement will avoid
24 substantial expenditure of time by the Trustee as well as considerable risk of loss and
25 significant litigation expenses.
26

1 **CONCLUSION**

2 Based on the bankruptcy context in which this Policy litigation arose, the
3 complexity of the factual history, the uncertainty of the outcome of the Trustee's
4 claims, and the unpersuasiveness of the Beverlys' claims to Policy proceeds, the
5 oppositions filed by William and Stephanie Beverly are overruled. The motion to
6 approve the settlement between Trustee and Chicago is granted.

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8 SO ORDERED.

9 DATED: 11/14/2007

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12 THOMAS B. DONOVAN
13 United States Bankruptcy Judge
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NOTICE OF ENTRY OF JUDGMENT OR ORDER
AND CERTIFICATE OF MAILING

TO ALL PARTIES IN INTEREST LISTED BELOW:

1. You are hereby notified that a judgment or order entitled:

**MEMORANDUM OF DECISION IN SUPPORT OF ORDER GRANTING MOTION
FOR APPROVAL OF COMPROMISE**

was entered on 11/21/07.

2. I hereby certify that I mailed a true copy of the order or judgment to the persons
and entities listed below on 11/21/07.

Office of the U. S. Trustee
Ernst & Young Plaza
725 S. Figueroa St., 26th Floor
Los Angeles, CA 90017

Debtor:
William J. Beverly
3424 Carson St., #400
Torrance, CA 90505

Attorney for Debtor:
Dennis McGoldrick, Esq.
350 S. Crenshaw Blvd., #A207B
Torrance, CA 90503

Chapter 7 Trustee:
Edward M. Wolkowitz
1888 Century Park East, #1500
Los Angeles, CA 90067

Attorney for Chapter 7 Trustee:
Douglas D. Kappler, Esq.
Robinson, Diamant & Wolkowitz, APC
1888 Century Park East, #1500
Los Angeles, CA 90067

Attorney for Stephanie Beverly:
Joshua D. Wayser, Esq.
Locke Lord Bissell & Liddell, LLP
300 S. Grand Ave, #800
Los Angeles, CA 90071-3119

Dated: 11/21/07


Clerk